

DJ 166-012-3
X9764

MAR 24 1977

Mr. Robert B. Spoonamore
Superintendent
Ralls Independent School
District
Box AD
Ralls, Texas 79357

Dear Mr. Spoonamore:

This is in reference to the change to a majority vote requirement for election to the Board of Trustees of the Ralls Independent School District, Crosby County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on February 4, 1977.

We have given careful consideration to the information furnished by you as well as Bureau of the Census data and information and comments from interested parties. On the basis of our analysis we are unable to conclude, as we must under the Voting Rights Act, that the imposition of a majority vote requirement will not have a discriminatory effect on the conduct of elections in the Ralls Independent School District.

Our analysis reveals that Mexican Americans constitute a substantial proportion of the population of the Ralls Independent School District and that bloc voting along ethnic lines may exist. Under these circumstances, recent court decisions, to which we feel obligated to give great weight, indicate that a majority vote requirement in the context of at-large elections has the potential for abridging minority voting rights. See White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971).

Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the majority vote requirement for election to the Board of Trustees of the Ralls Independent School District. Of

- 2 -

course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, Sections 51.23 to 51.25 of the Attorney General's Section 5 guidelines (28 C.F.R. 51.23-51.25) permit reconsideration of the objection should you have new information bearing on the matter. However, until such time as the objection may be withdrawn or a judgment from the District of Columbia Court is obtained, the legal effect of the objection by the Attorney General is to make the change to a majority vote requirement legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

Mr. Douglas Prewitt
Assistant Superintendent
Lufkin Public Schools
Post Office Drawer 1407
Lufkin, Texas 75901

Dear Mr. Prewitt:

This is in reference to the imposition of the numbered place feature and majority vote requirement for the election of school board members in the Lufkin Independent School District, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on January 26, 1977. Although we noted your requests for expedited consideration, we have been unable to respond until this time.

We have given careful consideration to the information furnished by you, as well as demographic data, the decision in David v. Garrison, C.A. No. TX-73-CA-113 (E.D. Texas Jan. 27, 1975), and information furnished by other interested parties. Our analysis reveals that blacks constitute approximately 28 percent of the population of the school district, that with one exception blacks have not been elected to the school board, and that bloc voting along racial lines may exist.

Under these circumstances, recent Supreme Court decisions, to which we feel obligated to give great weight, indicate that the combination of the numbered place and majority requirements with an at-large election system may have the effect of abridging minority voting rights. See White v. Regester, 412 U.S. 755 (1973); Beer v. United States, 425 U.S. 130 (1976); United Jewish Organizations v. Carey, 45 U.S.L.W. 4221 (U.S. March 1, 1977). We are unable to conclude, as we must under the Voting Rights Act, that these requirements will not have a racially discriminatory effect.

- 2 -

Accordingly, I must on behalf of the Attorney General interpose an objection to the imposition of the numbered place system and the majority vote requirement for electing school board members in the Lufkin Independent School District.

Of course, Section 5 permits seeking approval of all changes affecting voting by the United States District Court for the District of Columbia irrespective of whether the changes have previously been submitted to the Attorney General. However, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the change to numbered place and majority vote legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

MAR 25 1977

Mr. Jerry Jacobs
Superintendent, Raymondville
Independent School District
P.O. Box 429
Raymondville, Texas 78580

Dear Mr. Jacobs:

This is in reference to the polling place changes for the Raymondville Independent School District, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on February 15, 1977.

Your submission consists of the following changes in the location of polling places. The polling place for Precinct 1 (Willacy County Precincts 1 and 7) has been moved from the Raymondville City Hall to the American Legion Hall. The polling place for Precinct 2 (Willacy County Precincts 2, 8, and 11) has been moved from one location to another within the Raymondville Community and Historical Center.

The Attorney General does not interpose any objection to the polling place change at the Community and Historical Center. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of a change.

It is our understanding that since we received this submission the school district, as required by order of the 107th District Court, Willacy County (March 14, 1977), has designated the Smith Elementary School as the

- 2 -

polling place for those Precinct 1 voters residing in County Precinct 1, and that this polling place will be used in the election scheduled for April 2, 1977, unless the district court ruling is reversed on appeal prior to the date of the election. We also understand that the creation of the Smith school polling place will be submitted to the Attorney General pursuant to Section 5.

The situation with respect to polling places for the April 2, 1977 election, therefore, is still uncertain. Nevertheless, because of your request for the expedited consideration of this submission and because of the need of a resolution of this matter prior to the election, we are responding at this time.

We will first consider the situation if only the American Legion Hall is used as a Precinct 1 polling place. We have received un rebutted representations indicating that the change in the location of the Precinct 1 polling place from the City Hall to the American Legion Hall may have the purpose or effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Specifically, it appears that this change will result in a significant inconvenience for many Mexican American voters residing in County Precinct 1. In addition, the American Legion Hall appears to be a place where many Mexican Americans feel unwelcome. Thus it is likely that the use of the American Legion Hall will have the effect of deterring participation by Mexican Americans in the April 2, 1977 election. We also note that other alternatives were available to the school district to overcome the problems connected with the continued use of the City Hall as a polling place location.

On the basis of these facts and circumstances, the Attorney General is unable to conclude, as he must under the Voting Rights Act, that the change to the use of the

- 3 -

American Legion Hall as the polling place for Precinct 1 will not have the effect of discriminating on account of race, color, or membership in a language minority group. Therefore, on behalf of the Attorney General, I must interpose an objection to the implementation of this polling place change.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, Sections 51.23 to 51.25 of the Attorney General's Section 5 guidelines (28 C.F.R. 51.23-51.25) permit reconsideration of the objection should you have new information bearing on the matter. However, until such time as the objection may be withdrawn or a judgment from the District of Columbia Court is obtained, the legal effect of the objection by the Attorney General is to make the change to the American Legion Hall legally unenforceable.

It is our understanding, however, that the use of the Smith school as a polling place location would effectively eliminate whatever problems may be created by the change from the City Hall to the American Legion Hall. Therefore, the Attorney General does not interpose any objection to the use of the American Legion Hall for voters residing in County Precinct 7 if the Smith Elementary School is used. If the school district decides not to use the Smith school polling place for the April 2, 1977 election, please notify Voting Section Attorney David Hunter at 202--739-3849.

As was pointed out above, Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent

- 4 -

judicial action to enjoin the enforcement of a change. We should further point out that the Attorney General has no authority to waive the 60-day period for the consideration of a submission and, as our guidelines indicate (see 28 C.F.R. Section 51.22), we may reexamine our position on your submission should we receive additional information concerning the changes in voting procedure prior to the expiration of the 60-day period. Should such information warrant a change in the Attorney General's determination, you will be so advised.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

Mr. Hugo J. Nowotny
Business Manager
Comal Independent School District
1421 Highway 81 East
New Braunfels, Texas 78130

APR 4 1977

Dear Mr. Nowotny:

This is in reference to the change to a numbered place system for the election of members of the Board of Trustees and the addition of two polling places in the Comal Independent School District, Comal County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on February 2, 1977.

The Attorney General does not interpose any objection to the additional polling places. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

In regard to the change to numbered places, we have given careful consideration to the materials and information you have submitted as well as information and comments from other interested parties, and relevant court decisions.

The use of numbered places in at-large electoral systems has been criticized in judicial decisions because of its potential for diluting the voting strength of minority group members. The court in Dunston v. Scott, 336 F. Supp. 106, 213 n. 9 (M.D.N.C. 1972), explained:

- 4 -

It is clear that the numbered seat law may have the effect of curtailing minority voting power. In a true at large election, if the majority spreads its vote around and the minority single shot votes, the minority strength is concentrated, thus increasing their chance of electing. However, if the minority candidate is forced to run against a specific candidate or candidates for a specific seat, the majority can readily identify for whom they must vote in order to defeat the minority candidate.

The potentially discriminatory nature of a numbered place system was also recognized in White v. Regester, 412 U.S. 755, 766-67 (1973); Simmer v. McKeithen, 485 F.2d 1297, 1305 (5th Cir. 1973), aff'd "without approval of the constitutional views expressed by the Court of Appeals" sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976); and Black United for Lasting Leadership v. City of Shreveport, 71 F.R.D. 623, 626, 632, 536 (W.D. La. 1976).

The relevant circumstances in the Comal Independent School District do not foreclose the possibility that a numbered place system will have a discriminatory effect in that district. Although approximately 17 percent of the residents of the district are Mexican Americans, only about four percent of the district's registered voters are Mexican Americans, and no Mexican Americans have been elected to the Board of Trustees. These facts tend to show that Mexican Americans are less than full participants in the district's political process, and that the addition of a potentially discriminatory electoral device will further inhibit full and equal participation in that process by Mexican Americans.

In your letter of January 31, 1977, you state that "the change to running by place was done to simplify the ballot, and avoid confusion on the part of voters. Many voters could not understand that they could vote for one, two or three candidates when the Ballot did not designate three (3) places." To the extent that this problem exists, it has not been demonstrated why such a problem could not be eliminated through education efforts and clear instructions on the ballot.

- 3 -

As our guidelines explain (28 C.F.R. Section 51.19), under Section 5 of the Voting Rights Act the burden is on the submitting authority to establish that the submitted change does not have the purpose and will not have the effect of denying or abridging the vote on account of race, color, or membership in a language minority group. See Georgia v. United States, 411 U.S. 826 (1973). On the basis of the judicial decisions and factual circumstances that have been discussed, the Attorney General is unable to conclude that this burden has been met here. Therefore, on behalf of the Attorney General, I must interpose an objection under Section 5 to the use of the numbered place system in the election of members of the Board of Trustees of the Coral Independent School District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, our guidelines (28 C.F.R. Sections 51.23-51.26) permit reconsideration of the objection should you have new information bearing on the matter. However, until such time as the objection may be withdrawn or a judgment from the District of Columbia Court obtained, the legal effect of the objection by the Attorney General is to make the change to the numbered place system unenforceable.

Please inform us within 30 days of your receipt of this letter of the steps the Board of Trustees intends to take to revert to an at-large system of election without the numbered place provision or to obtain the reconsideration or judgment described in the previous paragraph. If you have any questions concerning this matter please contact Voting Section Attorney David Hunter at 202--739-3640.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

DSD:EF:rjs
DJ 166-012-3
X1849-1851

Mr. Hugo J. Rowotny
Business Manager
Comal Independent School District
1421 Highway 81 East
New Braunfels, Texas 78130

APR 4 1977

Dear Mr. Rowotny:

This is in reference to the change to a numbered place system for the election of members of the Board of Trustees and the addition of two polling places in the Comal Independent School District, Comal County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on February 2, 1977.

The Attorney General does not interpose any objection to the additional polling places. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

In regard to the change to numbered places, we have given careful consideration to the materials and information you have submitted as well as information and comments from other interested parties, and relevant court decisions.

The use of numbered places in at-large electoral systems has been criticized in judicial decisions because of its potential for diluting the voting strength of minority group members. The court in Dunston v. Scott, 336 F. Supp. 206, 213 n. 9 (S.D.N.C. 1972), explained:

- 2 -

It is clear that the numbered seat law may have the effect of curtailing minority voting power. In a true at large election, if the majority spreads its vote around and the minority single shot votes, the minority strength is concentrated, thus increasing their chance of electing. However, if the minority candidate is forced to run against a specific candidate or candidates for a specific seat, the majority can readily identify for whom they must vote in order to defeat the minority candidate.

The potentially discriminatory nature of a numbered place system was also recognized in White v. Regester, 412 U.S. 755, 766-67 (1973); Zimmer v. McKeithen, 485 F.2d 1297, 1305 (5th Cir. 1973), aff'd "without approval of the constitutional views expressed by the Court of Appeals" sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1975); and Blacks United for Lasting Leadership v. City of Shreveport, 71 P.R.D. 623, 626, 632, 536 (W.D. La. 1975).

The relevant circumstances in the Comal Independent School District do not foreclose the possibility that a numbered place system will have a discriminatory effect in that district. Although approximately 17 percent of the residents of the district are Mexican Americans, only about four percent of the district's registered voters are Mexican Americans, and no Mexican Americans have been elected to the Board of Trustees. These facts tend to show that Mexican Americans are less than full participants in the district's political process, and that the addition of a potentially discriminatory electoral device will further inhibit full and equal participation in that process by Mexican Americans.

In your letter of January 31, 1977, you state that "the change to running by place was done to simplify the ballot, and avoid confusion on the part of voters. Many voters could not understand that they could vote for one, two or three candidates when the ballot did not designate three (3) places." To the extent that this problem exists, it has not been demonstrated why such a problem could not be eliminated through education efforts and clear instructions on the ballot.

- 3 -

As our guidelines explain (28 C.F.R. Section 51.19), under Section 5 of the Voting Rights Act the burden is on the submitting authority to establish that the submitted change does not have the purpose and will not have the effect of denying or abridging the vote on account of race, color, or membership in a language minority group. See Georgia v. United States, 411 U.S. 526 (1973). On the basis of the judicial decisions and factual circumstances that have been discussed, the Attorney General is unable to conclude that this burden has been met here. Therefore, on behalf of the Attorney General, I must interpose an objection under Section 3 to the use of the numbered place system in the election of members of the Board of Trustees of the Coral Independent School District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, our guidelines (28 C.F.R. Sections 51.23-51.25) permit reconsideration of the objection should you have new information bearing on the matter. However, until such time as the objection may be withdrawn or a judgment from the District of Columbia Court obtained, the legal effect of the objection by the Attorney General is to make the change to the numbered place system unenforceable.

Please inform us within 30 days of your receipt of this letter of the steps the Board of Trustees intends to take to revert to an at-large system of election without the numbered place provision or to obtain the reconsideration or judgment described in the previous paragraph. If you have any questions concerning this matter please contact Voting Section Attorney David Hunter at 202--739-3649.

Sincerely,

Drew S. Ways III
Assistant Attorney General
Civil Rights Division

APR 11 1977

Mr. W. Z. Miller
Superintendent
Prairie Lea Independent
School District
Box 12
Prairie Lea, Texas 78661

Dear Mr. Miller:

This is in reference to the imposition of numbered place and majority vote requirements for the election of school board members of the Prairie Lea Independent School District, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on February 10, 1977.

We have given careful consideration to the information you have provided as well as to relevant demographic data and court decisions. The courts have held that, in the context of at-large elections, the imposition of numbered place and majority vote requirements can have a discriminatory effect on minority political influence. See White v. Regester, 412 U.S. 755, 766-67 (1973), and Zimmer v. McKeithen, 485 F.2d 1297, 1305 (5th Cir. 1973), aff'd sub nom. East Carroll School Board v. Marshall, 424 U.S. 636 (1976).

Our analysis reveals that Mexican Americans constitute approximately 20 percent of the district's population and blacks approximately 10 percent. No minorities serve on the school board and, except for one who later withdrew, there have been no minority candidates at least since 1969. Although we have no specific evidence that this absence of minority participation in the affairs of the Prairie Lea Independent School District is either the direct or indirect result of discrimination, your submission indicated no compelling need for the adoption of the numbered place and majority vote requirements, and in the course of our research with respect to this change we have discovered none.

In these circumstances, the Attorney General is unable to determine whether or not the imposition of numbered place and majority vote requirements by the Prairie Lea Independent School District has the purpose or will have the effect

-2-

of denying or abridging the right to vote on account of race or color. Because the burden is on the submitting authority to prove the absence of discrimination, Section 5 of the Voting Rights Act requires that in such a situation an objection be interposed. See 28 C.F.R. Section 51.19. Accordingly, on behalf of the Attorney General, I must interpose an objection to the numbered place and majority vote requirements.

If, however, you have new information indicating that these requirements do not have a discriminatory purpose or effect, you may request us to reconsider this determination. See 28 C.F.R. Sections 51.12, 51.12, and 51.24. In addition, Section 5 permits the Prairie Lea Independent School District to seek a declaratory judgment from the United States District Court for the District of Columbia that the imposition of numbered place and majority vote requirements does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Until the objection is withdrawn or such a declaratory judgment obtained, the legal effect of this objection is to render the numbered place and majority requirements unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

MAY 2 1977

Mr. William A. Meitzen
District Attorney
Fort Bend County
Richmond, Texas 77469

Dear Mr. Meitzen:

This is in reference to the changes in voting precincts and polling places for Fort Bend County since November, 1972, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on March 3, 1977.

We have given careful consideration to these changes and to the supporting materials you have provided, as well as to comments from interested parties and relevant demographic data. The Attorney General does not interpose any objections to the changes in voting precincts or to the changes in polling places for Precincts 3, 9, 11, 13, 17, 22, 23, 26, 27, 28, and 29. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

With respect to the change of polling place for Precinct 12-A from the City Hall to the Rose Rich Shopping Center and to the selection of the Deaf Smith School for the polling place for Precinct 1-B we are unable to make the same determination. Our analysis reveals that the Rose Rich Shopping Center, the new polling place for Precinct 12-A, is located several miles from the heaviest concentration of minority population and that public transportation to the shopping center is not available. The shopping center is significantly less convenient for the minority population than was the prior polling place, at City Hall. We have been informed that more convenient sites within Precinct 12-A are available. In addition, it appears that confusion has resulted from the shift of the polling place within the shopping location center itself without adequate notice.

cc: Public File ✓

X 8240

-2-

Similarly, the polling place located at the Deaf Smith School in the Anglo section in the southern tip of Precinct 1-B creates a significant inconvenience to minority voters, who are concentrated in the northern end of the precinct. The prior polling place location, at the courthouse, was substantially more accessible.

Under these circumstances, the Attorney General cannot conclude, as he must under Section 5, that the polling place locations for Precincts 12-A and 1-B do not have the purpose or effect of discriminating on account of race, color, or membership in a language minority group. Accordingly, I must, on behalf of the Attorney General, interpose an objection to these polling place changes.

If, however, you have new information indicating that these polling place changes do not have a discriminatory purpose or effect, you may request us to reconsider this determination. See 28 C.F.R. Section 51.21, 51.23, and 51.24. In addition, Section 5 permits Fort Bend County to seek a declaratory judgment from the United States District Court for the District of Columbia that these polling place changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. However, until the objection is withdrawn or such a declaratory judgment obtained, the legal effect of this objection is to make these two changes in polling places legally unenforceable.

Finally, our review of the maps you provided of precincts in the City of Rosenberg in 1972 and 1976 suggests that between 1972 and 1976 there may have been a reapportionment of Commissioners' Precincts in Fort Bend County. If this is the case, that is a change that must be the subject of a declaratory judgment action in the District of Columbia District Court or submitted to the Attorney General for preclearance.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

JUN 17 1977

Mr. Wallace Shaw
City Attorney
City of Clute
P. O. Box 997
Clute, Texas 77531

Dear Mr. Shaw:

This is in reference to the change to a majority vote requirement for election to the City Council of Clute, Brazoria County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on April 18, 1977.

We have given careful consideration to the information furnished by you and information and comments from interested parties. On the basis of our analysis we are unable to conclude, as we must under the Voting Rights Act, that the imposition of a majority vote requirement will not have a discriminatory effect on the conduct of elections in the City of Clute.

Our analysis reveals that the only successful Mexican American candidate for the city council received only a plurality of the votes, that bloc voting along ethnic lines may exist, and that no minorities served as members of the Charter Review Commission, which recommended the adoption of the majority vote requirement. Under these circumstances, recent court decisions, to which we feel obligated to give great weight, indicate that a majority vote requirement in the context of at-large elections has the potential for abridging minority voting rights. See White v. Regester, 412 U.S. 755 (1973); and Zimmer v. McKeithen, 485 F. 2d 1297 (5th Cir. 1973) aff'd sub nom. East Carroll School Board v. Marshall, 424 U.S. 636 (1976).

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change will not have a discriminatory effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance.

-2-

Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the majority vote requirement for election to the City Council in the City of Clute. Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Sections 51.21, 51.23, and 51.24 of the Attorney General's Section 5 guidelines (28 C.F.R. 51.21, 51.23, and 51.24) permit reconsideration of the objection should you have new information bearing on the matter. However, until such time as the objection may be withdrawn or a judgment from the District Court of Columbia is obtained, the legal effect of the objection by the Attorney General is to make the change to the majority vote requirement legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

DSD:DEH:ED:rjs
DJ 166-012-3

A1082

OCT 3 1977

Mr. J. W. Socher
Assistant Superintendent for
Business
Lamar Consolidated Independent
School District
Administration Building
930 East Stadium Drive
Rosenberg, Texas 77471

Dear Mr. Socher:

This is in reference to the bilingual election procedures for the Lamar Consolidated Independent School District, Fort Bend County, Texas, submitted to the Attorney General pursuant to Section 3 of the Voting Rights Act of 1965, as amended. Your submission was completed on August 4, 1977.

In regard to the bilingual written materials used by the school district, the Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change.

In regard to the school district's bilingual oral assistance program, we have given careful consideration to the information furnished by you as well as information and comments from interested parties. On the basis of our analysis, we are unable to conclude, as we must under the Voting Rights Act, that the Lamar Consolidated Independent School District's bilingual oral assistance program does not have a discriminatory effect on Mexican Americans in the school district.

- 2 -

Our analysis reveals that Mexican Americans constitute a significant proportion of the population of the Lamar Consolidated Independent School District and that a substantial proportion of the Mexican Americans need assistance because they are illiterate in both English and Spanish. Leaders in the Mexican American community consider it very important that people chosen to provide assistance in Spanish be identified with the Mexican American community in order for language minority citizens to participate fully and effectively in the electoral process. In addition, Section 53.16 of the Interpretative Guidelines on the Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups (41 Fed. Reg. 29398 (1976)) sets forth the following as a guide for compliance with the language minority requirements of the Voting Rights Act:

A jurisdiction is more likely to achieve compliance with these requirements if it has worked with the cooperation of and to the satisfaction of organizations representing members of the applicable language minority group.

The school district has supplied no information revealing contacts or communications with representatives of Mexican Americans in the community who would be knowledgeable about the need for bilingual oral assistance and who would be able to suggest Mexican Americans to provide such assistance. Neither have our contacts with the Mexican American community established that any such contacts or consultations by the school district have been made. More importantly, however, information we have received from the Mexican American community indicates that Mexican Americans in fact consider the oral assistance that is available inadequate to assure effective voting by those needing assistance.

Under Section 5 of the Voting Rights Act the burden is on the submitting authority to establish that the change submitted does not have a discriminatory effect. (See 18 C.F.R. 51.19). Our analysis does not show that the Lamar Consolidated Independent School District has carried that burden. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the bilingual oral assistance program for the Lamar Consolidated Independent School District.

3

However, if you have information showing that our understanding of the school district's bilingual oral assistance program is incorrect, or if the school district changes its oral assistance program to more accurately reflect the needs of the Mexican American community, you may ask the Attorney General to reconsider his objection. See our Section 5 Guidelines, 28 C.F.R. Sections 51.21, 51.23 and 51.24. Such information might include, for example, evidence of consultations with Mexican American groups in the school district and the use of interpreters suggested by such groups, appointment of Mexican Americans as election judges and clerks, rather than just interpreters, and other evidence of input from Mexican Americans in the community in the formulation of the school district's bilingual program.

Of course, as provided by section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. However, until such time as the objection may be withdrawn or a judgment from the District of Columbia Court obtained, the legal effect of the objection by the Attorney General is to make the change in question unenforceable.

Sincerely,

Ernest S. Davis III
Assistant Attorney General
Civil Rights Division

OCT 3, 1977

Mr. J. W. Booher
Assistant Superintendent for
Business
Lamar Consolidated Independent
School District
Administration Building
930 East Stadium Drive
Rosenberg, Texas 77471

Dear Mr. Booher:

This is in reference to the bilingual election procedures for the Lamar Consolidated Independent School District, Fort Bend County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on August 4, 1977.

In regard to the bilingual written materials used by the school district, the Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change.

In regard to the school district's bilingual oral assistance program, we have given careful consideration to the information furnished by you as well as information and comments from interested parties. On the basis of our analysis, we are unable to conclude, as we must under the Voting Rights Act, that the Lamar Consolidated Independent School District's bilingual oral assistance program does not have a discriminatory effect on Mexican Americans in the school district.

- 2 -

Our analysis reveals that Mexican Americans constitute a significant proportion of the population of the Lamar Consolidated Independent School District and that a substantial proportion of the Mexican Americans need assistance because they are illiterate in both English and Spanish. Leaders in the Mexican American community consider it very important that people chosen to provide assistance in Spanish be identified with the Mexican American community in order for language minority citizens to participate fully and effectively in the electoral process. In addition, Section 55.16 of the Interpretative Guidelines on the Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups (41 Fed. Reg. 29998 (1976)) sets forth the following as a guide for compliance with the language minority requirements of the Voting Rights Act:

A jurisdiction is more likely to achieve compliance with these requirements if it has worked with the cooperation of and to the satisfaction of organizations representing members of the applicable language minority group.

The school district has supplied no information revealing contacts or communications with representatives of Mexican Americans in the community who would be knowledgeable about the need for bilingual oral assistance and who would be able to suggest Mexican Americans to provide such assistance. Neither have our contacts with the Mexican American community established that any such contacts or consultations by the school district have been made. More importantly, however, information we have received from the Mexican American community indicates that Mexican Americans in fact consider the oral assistance that is available inadequate to assure effective voting by those needing assistance.

Under Section 5 of the Voting Rights Act the burden is on the submitting authority to establish that the change submitted does not have a discriminatory effect. (See 28 C.F.R. 51.12). Our analysis does not show that the Lamar Consolidated Independent School District has carried that burden. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the bilingual oral assistance program for the Lamar Consolidated Independent School District.

However, if you have information showing that our understanding of the school district's bilingual oral assistance program is incorrect, or if the school district changes its oral assistance program to more accurately reflect the needs of the Mexican American community, you may ask the Attorney General to reconsider his objection. See our Section 5 Guidelines, 28 C.F.R. Sections 51.21, 51.23 and 51.24. Such information might include, for example, evidence of consultations with Mexican American groups in the school district and the use of interpreters suggested by such groups, appointment of Mexican Americans as election judges and clerks, rather than just interpreters, and other evidence of input from Mexican Americans in the community in the formulation of the school district's bilingual program.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. However, until such time as the objection may be withdrawn or a judgment from the District of Columbia Court obtained, the legal effect of the objection by the Attorney General is to make the change in question unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

NOV 15 1977

Mr. J. W. Booher
Assistant Superintendent for
Business
Lamar Consolidated Independent
School District
Administration Building
930 East Stadium Drive
Rosenberg, Texas 77471

Dear Mr. Booher:

This is in reference to your request that the Attorney General reconsider his October 3, 1977, objection under Section 5 of the Voting Rights Act of 1965, as amended to the bilingual oral assistance program for the Lamar Consolidated Independent School District, Fort Bend County, Texas. Your request for reconsideration was received on October 17, 1977. In accordance with your request, expedited consideration has been given this submission pursuant to the procedural guidelines for the administration of Section 5 (28 C.F.R Section 51.22).

We have given careful consideration to the information which you have recently forwarded as well as information and comments from interested parties. We have taken particular note of the fact that you have consulted with representatives of the Voter Registration and Education Project in Fort Bend County and assigned Mexican American clerks suggested by them to the polling places used by the school district. On the basis of this, it is our opinion that the school district's bilingual oral assistance program will now assure that language minority citizens who need assistance to effectively realize their right to vote will receive such assistance.

- 2 -

Therefore, on behalf of the Attorney General, I am withdrawing the objection to the bilingual oral assistance program for the Lamar Consolidated Independent School District. The decision to withdraw the objection is based on our understanding that the oral assistance procedures now in effect (i.e. consultations with Mexican American groups in the community on the need for and provision of oral assistance) will be used for all elections conducted by the school district.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

JAN 16 1978

Mr. John F. Pettit
Assistant Secretary of State
Capitol Station
Austin, Texas 78711

Mr. Cecil A. Morgan
Morgan, Gambill & Owen
2108 Continental Life Building
Fort Worth, Texas 76102

Dear Messrs. Pettit and Morgan:

This is in reference to House Bill 2152, 65th Legislature, Regular Session, 1977, and to the implementation, as set forth below, of House Bill 2152 by the Fort Worth Independent School District, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, as amended. The submission of House Bill 2152 was originally received on July 1, 1977. Additional information with respect to this submission was received on October 31 and November 17, 1977. The submission of the implementation of House Bill 2152 by the Fort Worth Independent School District was originally received on October 31, 1977, and was supplemented on November 17, 1977. Because House Bill 2152 at this time directly affects only the Fort Worth Independent School District, we have considered it appropriate to analyze this legislation in connection with our analysis of its implementation by the Fort Worth Independent School District. Similarly, because the changes adopted by the Fort Worth Independent School District are authorized or required by House Bill 2152, we can make a determination with respect to these changes under Section 5 only after a determination has been made with respect to House Bill 2152. Although we noted your request for expedited consideration, we have been unable to respond until this time.

With the condition specified below, the Attorney General does not interpose any objection to House Bill 2152. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

cc: Public File

- 2 -

Any changes affecting voting made by independent school districts pursuant to House Bill 2152 are subject to the preclearance requirement of Section 5. Such changes include, but are not limited to, the increase in size of the board of trustees, the selection by the electorate of the president and vice-president of the board, the use and creation of single-member districts, the use of a majority vote requirement pursuant to Section 23.023(e) of the Texas Education Code, a change in the length of terms or in the staggering of terms, and the method of transition from the old to the new system of election.

With respect to the implementation of House Bill 2152 by the Fort Worth Independent School District, your submission, as we understand it, includes the following changes: (1) changes required by House Bill 2152: the increase in the size of the board of trustees from seven to nine members, the use of single-member districts for the election of seven members of the board, the selection of the president and vice-president of the board by the electorate by means of an election held at large, the use pursuant to Section 23.023(e) of a majority vote requirement in the selection of trustees, a decrease in the length of terms of office from six years to four years, and a change in the system of staggering the terms of office; (2) changes partially provided for by House Bill 2152: the method of transition from the old to the new system of election, and (3) changes adopted by the Fort Worth Independent School District: a districting plan for seven single-member districts. Except as specified below, the Attorney General does not interpose any objections to these changes. However we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

Section 23.023(h) of the Texas Education Code, as amended by House Bill 2152, specifies the method of transition from the old electoral system to the system specified by Section 23.023. Under this system trustees representing two of the seven single-member districts will be elected in 1978. Trustees representing the remaining five single-member districts will not be elected until 1980 or 1982. In our analysis of this method of transition we have considered the legislative findings contained in Section 3 of House Bill 2152 and have been mindful of the pending lawsuit challenging

- 3 -

the at-large election of trustees of the Fort Worth Independent School District. As a result, we are unable to conclude, as we must under the Voting Rights Act, that the delay in the implementation of the use of the seven single-member district plan by the Fort Worth Independent School District does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Therefore, on behalf of the Attorney General, I must interpose an objection to the implementation by the Fort Worth Independent School District of Section 23.023(h) of the Texas Education Code.

Of course, as provided by Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the change in question neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Attorney General's Section 5 guidelines (28 C.F.R. 51.21, 51.23 and 51.24) permit you to request reconsideration of this matter. However, until such time as the objection may be withdrawn or a favorable judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the method of transition specified by Section 23.023(h) legally unenforceable for the Fort Worth Independent School District.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

MAR 1 1978

Mr. Joe Rasweber
Harris County Attorney
Harris County Courthouse
Houston, Texas 77002

Dear Mr. Rasweber:

This is in reference to the changes in election precincts and polling places for Harris County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on January 30, 1978, upon our receipt of your January 27, 1978, letter forwarding supplemental information.

We have given careful consideration to these changes and to the supporting materials you have provided, as well as to comments from interested parties and relevant demographic data. Except as indicated below, the Attorney General does not interpose any objections to the changes in election precincts and changes in polling places under submission. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

With respect to the change of polling place resulting from the consolidation of Precincts Nos. 55 and 340 we are unable to reach a like conclusion. Our analysis reveals that the 8th Avenue School, the polling place for the newly consolidated precinct, is located several miles from the heavy concentration of minority population in old Precinct 340, that those

cc: Public File
A3388

- 2 -

persons, many of whom are elderly, will have to cross the Katy Freeway which lacks a pedestrian overpass and that public transportation to the 8th Avenue School is not available. Thus, it appears that the 8th Avenue School is significantly less convenient for the minority population in old Precinct 340 than was the prior polling place at the West End Civic Club. In addition, it appears that confusion has resulted from the shift of the polling place without adequate notice or a public hearing.

Under these circumstances, the Attorney General cannot conclude, as he must under Section 5, that this change in polling place location does not have the effect of discriminating on account of race, color, or membership in a language minority group insofar as the minority voters in old Precinct 340 are concerned. Accordingly, I must, on behalf of the Attorney General, interpose an objection to this polling place change.

If, however, you have new information indicating this polling place change does not have a discriminatory purpose or effect, you may request us to reconsider this determination. See 28 C.F.R. Section 51.21, 51.23, and 51.24. In addition, Section 5 permits Harris County to seek a declaratory judgment from the United States District Court for the District of Columbia that this polling place change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. However, until the objection is withdrawn or such a declaratory judgment obtained, the legal effect of this objection is to make this change in polling place legally unenforceable.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

MAR 7 1978

Mr. Edgar Coble
Education Service Center
Region XIII
7703 North Lamar Boulevard
Austin, Texas 78752

Dear Mr. Coble:

This is in response to your request for reconsideration of the objection interposed April 11, 1977, to the imposition of numbered place and majority vote requirements for the election of school board members of the Prairie Lea Independent School District, Texas. Your request was received on January 6, 1978.

We have given careful consideration to the new information furnished by you. On the basis of our analysis of this information, we have concluded that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. I, therefore, on behalf of the Attorney General am withdrawing the previously interposed objection to the numbered place and majority vote requirement in Prairie Lea Independent School District. We feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure to object does not bar any subsequent judicial action to enjoin the enforcement of such change.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

MAR 1 8 1978

Mr. Richard G. Sedgeley
Attorney at Law
609 Fannin Building
Suite 1301
Houston, Texas 77002

Dear Mr. Sedgeley:

This is in reference to the change in election date for the Board of Trustees for the Waller Consolidated Independent School District of Harris and Waller County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on February 26, 1978.

We have given careful consideration to the information furnished by you, as well as demographic data, the decision in the United States v. State of Texas and Waller County, C.A. No. 76-H-1681 (S.D. Texas February 16, 1978), and information furnished by other interested parties. On the basis of our analysis we were unable to conclude, as we must under the Voting Rights Act, that the change in election date from the first Saturday in April to the second Saturday in August will not have a discriminatory effect on the conduct of elections in the Waller Consolidated Independent School District.

According to information furnished by School District officials, blacks constitute approximately 40 percent of the population of the School District. Our understanding is, however, that this does not include an estimated 3,000 students and faculty members of Prairie View A&M University located in the district.

Our analysis shows that virtually all of the resident students at Prairie View A&M University are black, that by virtue of the court decision in United States v. State of Texas and Waller County, supra, many of them now have a realistic opportunity to register and vote in Waller County, and that moving the School District election date from April to August will have the effect of conducting the election during a period when most of those student-voters are away from the area on summer school vacation. Under these circumstances, we cannot conclude, as we must under the Voting Rights Act, that this change in dates does not have a discriminatory purpose or effect. Accordingly, on behalf of the Attorney General, I must interpose an objection to the change in election dates from April to August.

Of course, Section 5 permits you to seek a declaratory judgment in the United States District Court for the District of Columbia that this change in dates does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. However, unless and until such a declaratory judgment is obtained the legal effect of this objection is to render the change legally unenforceable.

In view of the approach of the April 1 election, please advise us within ten days of the action intended to be taken by the Waller Consolidated Independent School District.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

MAR 24 1978

Mr. Jimmy Goodson
Dean of Administrative Services
Southwest Texas Junior College
Real, Uvalde, and Zavala Counties
Uvalde, Texas 78801

Dear Mr. Goodson:

This is in reference to the polling place change for the election of Trustees of the Southwest Texas Joint County Junior College District, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1963, as amended. Your submission was received on February 27, 1978.

Your submission involves a change in the Crystal City polling place from the S and L Building to the Zavala Agricultural Exposition Building. Your submission explains that "control of the building housing the existing polling place has changed hands and the new parties are reluctant to allow its continued use as a polling place. The proposed new site will provide better facilities, more parking area, and is equally accessible to all Crystal City voters as the former site was."

Under Section 5 of the Voting Rights Act, changes such as the one in question here cannot be made unless the Attorney General is persuaded that they do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In order to make the determination required of the Attorney General under Section 5 we have carefully studied the information you have provided as well as information provided by and views of other interested persons.

Based on this inquiry, it is our understanding that the S and L Building remains available as a polling place and indeed will be used on April 1, 1978 as the polling place for the Zavala County Board of Education. Concern has been expressed to us that the use of a polling place at a separate location by the Junior College District will have the effect of reducing Mexican American participation in the election. In addition, we have been told that Mexican Americans are generally less familiar with the Agricultural Exposition Building than with the S and L Building, and feel less welcome there.

- 2 -

Under these circumstances, we are unable to conclude that the polling place change in question does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Accordingly, on behalf of the Attorney General, I must interpose an objection to the change in the location of the Crystal City polling place for the election of Trustees of the Southwest Texas Joint County Junior College District from the S and T Building to the Anavela Agricultural Exposition Building.

Under the Procedures for the Administration of Section 5, 28 C.F.R. 51.21(b), 51.23, and 51.24, you may request the Attorney General to reconsider this objection. In addition, as provided by Section 5, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this polling place change does not have the prohibited discriminatory purpose or effect. However, until the objection is withdrawn or the declaratory judgment obtained, the change is legally unenforceable.

Finally, because an election is scheduled to be held on April 1, 1978, please notify us immediately, by telephoning Voting Section Attorney David H. Hunter at 202-739-3349, of the Junior College District's response to this objection.

Sincerely,

John Huerta
Acting Assistant Attorney General
Civil Rights Division

DJ 166-012-3
A2564-65

APR 7 1978

Mr. M. R. Parrish, Superintendent
Neches Independent School District
Box 1208
Neches, Texas 75779

Dear Mr. Parrish:

This is in reference to the numbered post and majority requirements for the election of members of the Board of Trustees of the Neches Independent School District of Anderson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on February 6, 1978.

We have given careful consideration to the information you have furnished. Our analysis reveals that blacks constitute a substantial proportion of the population of the Neches Independent School District, that trustees are elected at large with staggered terms, and that blacks have not been elected to the Board of Trustees. Under these circumstances, recent court decisions, to which we feel obligated to give great weight, indicate that the numbered post and majority vote requirements could have the potential for abridging minority voting rights. See White v. Regester, 412 U.S. 755, 766-67 (1973); Zimmer v. McKelthen, 485 F.2d 1297, 1305 (5th Cir. 1973), aff'd sub nom. East Carroll School Board v. Marshall, 424 U.S. 636 (1976); Robinson v. Commissioners Court, Anderson County, 505 F.2d 674 (5th Cir. 1974).

Section 5 of the Voting Rights Act places upon the submitting authority the burden of proving that a submitted change in voting practice and procedure does not have a racially discriminatory purpose or effect. (See Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19.) Because of the potential for diluting black voting strength inherent in the use of a numbered post and majority vote requirements for the Neches Independent School District and because the District has advanced no compelling reason for their use, we are unable to conclude that the burden of proof has been sustained and that the imposition of these requirements in the context of an at-large system will not have a racially discriminatory effect in the Neches Independent School District. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the numbered post and majority vote requirements for the election of members of the Board of Trustees of the Neches Independent School District.

- 2 -

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the numbered post and majority vote requirements legally unenforceable.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

APR 28 1978

Mr. Glenn Sodd
Dawson, Dawson, Sodd & Davis
Attorneys at Law
State National Bank Building
Corsicana, Texas 75110

Dear Mr. Sodd:

This is in reference to the numbered post and majority vote requirements for the election of the Board of Trustees of the Corsicana Independent School District, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, as amended. Information completing your submission was received on February 27, 1978.

We have examined this electoral system in view of the circumstances in Corsicana, Texas that, under the legal principles by which we are guided, we must consider relevant. See White v. Rozester, 412 U.S. 755 (1973); Zimmer v. McKeithen, 435 F.2d 1297 (1973). Navitt v. Sides, ____ F.2d ____ (5th Cir. 1978).

According to the information you have provided, information and comments from other interested persons, research conducted by our staff, and data contained in the 1970 Census, the following circumstances appear to exist. About 23 percent of the residents of the school district are black. There are indications that white voters in the district are reluctant to support black candidates but that candidates supported by black voters may in some circumstances be elected through the use of single-shot voting or when the vote of the white electorate is split among two or more candidates. In these circumstances the imposition of numbered post and majority vote requirements may have the effect of diluting black voting strength in elections for school trustees.

cc: Record
Chron.

Jones/Kelley / Adams / Hester / Hill
Cordon/Robert

Public File

John Wilson

Defendant's Exhibit #

DE-006156

USA_00013223

- 2 -

Under Section 5 the burden is on the jurisdiction proposing a voting change to show that the new practice or procedure is not discriminatory in purpose or effect. The burden of proof is the same when a submission is made to the Attorney General as it would be in a suit for a declaratory judgment under Section 5 brought in the United States District Court for the District of Columbia. See Georgia v. United States, 411 U.S. 526 (1973). The Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, C.F.R. 51.19, state:

If the evidence as to the purpose or effect of the change is conflicting, and the Attorney General is unable to resolve the conflict within the 60-day period, he shall, consistent with the above-described burden of proof applicable in the district court, enter an objection. . . .

Under the circumstances of this case, we are unable to conclude that the school district has sustained its burden of showing that the adoption and use of numbered post and majority vote requirements for trustee elections of the Corsicana Independent School District does not have a discriminatory purpose and will not have a discriminatory effect. Accordingly, on behalf of the Attorney General, I must interpose an objection to these requirements.

Under the Procedures for the Administration of Section 5 of the Voting Rights Act (42 C.F.R. 51.21(b) and (c), 51.23, and 51.24) you may request the Attorney General to reconsider this objection. In addition, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes do not have the purpose and will not have the effect of denying or abridging the

- 3 -

right to vote on account of race or color. However, until such time as the objection may be withdrawn or a favorable judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the numbered post and majority vote requirements for the election of the Board of Trustees of the Corsicana School Board legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

MAY 1 1978

Mr. Richard G. Sedgeley, Esquire
609 Fannin Building
Suite 1301
Houston, Texas 77002

Dear Mr. Sedgeley:

This is in reference to the choice of election date for the elections of the County School Trustees of Harris County, Texas, and to changes in election publicity and in polling places resulting from the choice of election date, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on February 28, 1978.

Prior to 1977, elections for the County School Trustees were held on the first Saturday of October of odd-numbered years. This was the election date for 15 of the 20 school districts within Harris County, and joint elections were held with these 15 districts. As a result of the Uniform Election Act of 1977, this October date was no longer available. For the new date the County School Trustees chose the third Saturday in January of even-numbered years.

We have carefully considered the information you have provided with respect to this choice of election date and the information provided by other interested parties. In our analysis we have been guided by relevant judicial decisions, by which we feel bound. See Beer v. United States, 425 U.S. 130 (1976).

cc: Public File

A3355

According to the information provided by you the January election date was chosen by 9 of the 20 school districts in Harris County, more than any other date. However, much less than 45 percent of the voting age population or of the registered voters of Harris County resides in these 9 school districts. It further appears from the data you have presented that an equally large proportion of the county's voting age population and registered voters reside in a single district, the Houston Independent School District, whose elections will be held in November. The Houston district, moreover, appears to contain a substantial majority of the county's black and Mexican American voters and potential voters. In addition, the district that would appear to have the next greatest number of minority voters or potential voters, the North Forest Independent School District, also will not be holding January elections.

Thus, one result of the choice of the January date is that voters residing in the school districts, all predominantly white Anglo, that use the January election date will have the added incentive of participating in two elections held jointly, while other voters, including virtually all of the minority voters, will only have the County School Trustee election to attract them. In addition, in districts with joint elections all regular school district polling places will be in use, while in other districts a reduced number of polling places will be used. Thus in the January 1978 election there were only 10 polling places within the vast Houston Independent School District while during its last school district election, the Houston Independent School District used 168 polling places.

Finally, the disadvantage to minority voters and potential voters within Harris County does not appear to be counteracted by publicity with respect to the County School Trustee elections. Publicity appears to be limited primarily to legal notices and posting, and oral publicity in the Spanish language is not provided, despite the substantial Mexican American population affected.

Under Section 5 the burden is on the jurisdiction proposing a voting change to show that the new practice or procedure is not discriminatory in purpose or effect. The burden of proof is the same when a submission is made to the Attorney General as it would be in a suit for a declaratory judgment under Section 5 brought in the United States District Court for the District of Columbia. See Georgia v. United States, 411 U.S. 526 (1973). The Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, C.F.R. 51.19, state:

- 3 -

If the evidence as to the purpose or effect of the change is conflicting, and the Attorney General is unable to resolve the conflict within the 60-day period, he shall, consistent with the above-described burden of proof applicable in the district court, enter an objection. . .

Under these circumstances, we are unable to conclude, as we must under the Voting Rights Act, that the election date chosen by the County School Trustees of Harris County and the changes in election publicity and in polling places resulting from the choice of election date do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Accordingly, on behalf of the Attorney General, I must interpose an objection to these practices or procedures with respect to voting.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider this objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the County School Trustees' choice of election date and the changes in election publicity and in polling places legally unenforceable.

Sincerely,

Brian K. Landsberg
~~Deputy~~ ~~U.S. District Judge~~
Actg. Assistant Attorney General
Civil Rights Division

DJ 166-012-3
A4277-4283

JUN 30 1978

Honorable William R. Vance
County Judge
Brazos County
P. O. Box 3995
Bryan, Texas 77801

Dear Judge Vance:

This is in reference to the reapportionment of Commissioner Precincts submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on May 1, 1978.

On June 9, 1978 we sent you a letter informing you that the Attorney General does not interpose any objection to this change. However, Section 5 allows the Attorney General sixty days in which to make a determination with respect to submitted changes affecting voting and, as provided in the Attorney General's guidelines, (28 C.F.R. 51.22), the Attorney General may reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period. This sixty-day period expires today.

Information has been brought to our attention this week that has necessitated our reconsideration of the initial determination with respect to the county's plan. Our reanalysis of the information you provided concerning your methodology in determining the population of the old and new commissioner precincts indicates that the statistics you have provided may be less accurate than it initially appeared. In addition, we note that Commissioner Precinct 4, the precinct with the greatest minority percentage prior to the redistricting, was increased in population by over 5,000 persons, although it was very close to ideal size prior to the redistricting.

Because the information that prompted our reconsideration of this submission was not received until late in the sixty-day statutory period, we have not been able to reanalyze the matter sufficiently to adhere to our previous conclusion that the plan does not have a discriminatory effect. Accordingly, on behalf of the Attorney General, I must interpose an objection to this plan. However, we will continue our reanalysis and if this reanalysis leads to the conclusion that the submitted redistricting does not have the prohibited

discriminatory effect, the objection will be withdrawn. We will notify you as soon as possible of the Attorney General's final decision in this matter.

Of course, as provided by Section 3 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the redistricting plan legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

JUL 3 1978

Mr. Romeo Flores
County Attorney
Jim Wells County
P. O. Drawer 2080
Alice, Texas 78332

Dear Mr. Flores:

This is in reference to the August 11, 1975 redistricting of the Commissioners Precincts of Jim Wells County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1963, as amended. Your submission was completed on May 3, 1978.

We have analyzed the information contained in your submission, comments of other interested persons, and data obtained from the Bureau of the Census in the light of relevant judicial decisions. See, e.g., Kirkey v. Hinds County Board of Supervisors, 558 F. 2d 139 (5th Cir. 1977), cert. denied, 46 U.S.L.W. 3137 (Nov. 18, 1977); Robinson v. Commissioners Court, 505 F.2d 674 (5th Cir. 1974).

Although Mexican-Americans constitute 64 percent of the population of Jim Wells County, only one of the four commissioners is a Mexican-American. An analysis of election returns for Jim Wells County reveals a clear pattern of racial bloc voting. We note that a redistricting of the Commissioners Precincts was ordered by a Federal district court on January 18, 1974. We have not been provided information indicating why a second redistricting was necessary only one and one half years after the first. According to the statistics you have provided the 1974 plan contained a total deviation from equal population of 28.4 percentage points; the deviation under the 1975 plan is substantially greater—40 percentage points.

cc: Public File

Under the 1974 plan two of the four precincts had a Mexican-American population of greater than 65 percent, and a third precinct had a Mexican-American population of greater than 60 percent. Under the submitted plan, the Mexican-American percentage is above 65 percent in only one precinct and is above 60 percent in one other.

with a mix of 50.84%

Under Section 5 the burden is on the jurisdiction proposing a voting change to show that the new practice or procedure is not discriminatory in purpose or effect. The burden of proof is the same when a submission is made to the Attorney General as it would be in a suit for a declaratory judgment under Section 5 brought in the United States District Court for the District of Columbia. See *Georgia v. United States*, 403 U.S. 926 (1973). The Procedures for the Administration of Section 5 of the Voting Rights Act of 1963, 28 C.F.R. 24.19, states:

If the evidence as to the purpose or effect of the change is conflicting, and the Attorney General is unable to resolve the conflict within the sixty-day period, he shall, consistent with the above-mentioned burden of proof applicable in the district court, enter an objection. . . .

Under these circumstances, we are unable to conclude that the county has carried its burden of proving that the submitted redistricting plan for Jim Wells County does not have the purpose and will not have the effect of diluting the vote of Mexican-Americans. Accordingly, on behalf of the Attorney General, I must interpose an objection to this plan.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5, 28 C.F.R. 51.20(b) & (c), 51.23, and 51.24, permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the redistricting plan legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

JUL 7 1978

Mr. W. M. Holm
Superintendent
Ector County Independent
School District
Post Office Box 3912
Odessa, Texas 79760

Dear Mr. Holm:

This is in reference to the numbered post and majority vote requirements for the election of Trustees of the Ector County Independent School District, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on May 8, 1978.

We have given careful consideration to the information furnished by you as well as Bureau of the Census data and information and comments from other interested parties. Our analysis reveals that Mexican Americans and blacks constitute a substantial proportion of the population of the Ector County Independent School District, that the Board of Trustees is elected at-large, and that racial bloc voting may exist. Under these circumstances, recent court decisions, to which we feel obligated to give great weight, indicate that numbered post majority vote requirements could have the potential for abridging minority voting rights. See White v. Regester, 412 U.S. 755, 766-67 (1973), Zimmer v. McKeithen, 485 F.2d 1297, 1305 (5th Cir. 1973), aff'd sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976); Nevitt v. Sides, 571 F.2d 209 (5th Cir. 1978).

- 2 -

Section 5 of the Voting Rights Act places upon the submitting authority the burden of proving that a submitted change in voting practice and procedure does not have a racially discriminatory purpose or effect. (See Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19.) Because of the potential for diluting black voting strength inherent in the use of numbered post and majority vote requirements under circumstances such as exist in the Ector County Independent School District and because the district has advanced no compelling reason for their use, we are unable to conclude that the burden of proof has been sustained and that the imposition of these requirements, in the context of an at-large election system, will not have a racially discriminatory effect. Accordingly, on behalf of the Attorney General, I must interpose an objection to the numbered post majority vote requirements for the election of Trustees of the Ector County Independent School District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.2(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the Attorney General's objection is to make the numbered post and majority vote requirements legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

NOV 13 1978

Mr. Charles Tighe
Attorney
Midland Independent School
District
Cotton, Bledsoe, Tighe,
Morrow and Dawson
Suite 1930, Wilco Building
Midland, Texas 79701

Dear Mr. Tighe:

This is in reference to your request for reconsideration of the objection pursuant to Section 5 of the Voting Rights Act, as amended, to the numbered post and majority vote requirements for the election of Trustees to the Midland Independent School District of Midland County, Texas. The objection was interposed on behalf of the Attorney General on August 6, 1976; your request for reconsideration was received on September 11, 1978.

We have reviewed the information provided and we have reanalyzed the information previously available to us. As our August 6, 1976, letter indicated, our objection at that time was based primarily on our inability to conclude that racial bloc voting did not exist in the Midland Independent School District. Having now had the opportunity to reevaluate the information available to us, including the results of the 1977 and 1978 elections we do not conclude that racial bloc voting exists in the Midland ISD elections to such an extent as to provide the necessary basis for a continued objection to the implementation of the majority vote and numbered posts requirements. Accordingly, on behalf of the Attorney General, I hereby withdraw the objection to

- 2 -

the numbered post and majority vote requirements for the election of Trustees to the Midland Independent School District. However, I feel the responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

DEC 27 1978

Mr. Lucius D. Bunton
Shafer, Gilliland, Davis,
Bunton & McCollum
Attorneys at law
First National Bank Building
Post Office Drawer 1552
Odessa, Texas 79760

Dear Mr. Bunton:

This is in reference to the reapportionment of commissioner precincts, polling place changes, addition of voting precincts and additional locations for absentee voting in 1975, in Terrell County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on October 26, 1978. In accordance with the request of the Court in Escamilla v. Stavley C.A. No. LR-78-CA-23 (W.D. Texas), we have made every effort to expedite our consideration of this submission pursuant to the procedural guidelines for the administration of Section 5 (28 C.F.R. 51.22) but have been unable to respond until this time.

We have given careful consideration to the changes involved and the supporting materials, as well as information and comments from other interested parties. The Attorney General does not interpose any objections to the polling place changes, addition of voting precincts and additional locations for absentee voting in 1975. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

- 2 -

In our review of districting plans we are guided by relevant judicial decisions. See Beer v. United States, 425 U.S. 130 (1976); Kirksey v. Hinds County Board of Supervisors, 554 F.2d 139 (5th Cir.), cert. denied, 54 L.Ed.2d 454 (1977); Wilkes County v. United States, 450 F. Supp. 1171 (D.D.C. 1978), affirmed, 47 U.S.L.W. 3391 (U.S. Dec. 4, 1978) (78-70). Under Section 5 the submitting jurisdiction has the burden of proving both that the change in question was not adopted with a discriminatory purpose and that its effect will not be discriminatory. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.19; Georgia v. United States, 411 U.S. 925, 538 (1973); City of Richmond v. United States, 422 U.S. 358, 380-81 (1975) (Brennan, J., dissenting).

In regard to the 1973 reapportionment of commissioner precincts in Terrell County, our analysis reveals that, according to the population survey conducted by the county, Mexican Americans constitute approximately 41 percent of the population of Terrell County. Under the submitted reapportionment plan, Mexican Americans constitute 75.6 percent of the population of Commissioner Precinct 2, 43.6 percent of the population of Commissioner Precinct 1, and 38.8 percent of the population of Commissioner Precinct 4. In our opinion, the effect of the 1973 reapportionment plan is to dilute minority voting strength by unnecessarily dividing the Mexican American community in Sanderson among three commissioner precincts. As a result, it would seem that Mexican American voters in Terrell County are afforded less of an opportunity than other residents to participate in the political processes and elect candidates of their choice. By splitting the Mexican American community with Precinct 2 and dispersing the remainder of that community between commissioner precincts 1 and 4, the plan has the effect of minimizing the overall impact of the Mexican American vote. Fairly drawn alternative reapportionment plans could easily avoid this result.

Under these circumstances, therefore, we are unable to conclude, as we must under the Voting Rights Act, that the plan does not discriminate against Mexican American voters. Accordingly, on behalf of the Attorney General, I must interpose an objection to the reapportionment plan here under submission.

- 3 -

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection the Attorney General is to make the reapportionment plan for commissioner precincts in Terrell County legally unenforceable.

As requested by the Court in the above cited litigation, we are providing a copy of this letter to the Court and to counsel for plaintiffs.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

cc: United States Circuit Judge Homer Thornberry
United States District Judge John Howland Wood, Jr.
United States District Judge D. W. Suttle

Clerk, U.S. District Court
Western District of Texas
Post Office Box 1349
Del Rio, Texas 78840

Joaquin G. Avila, Esquire
201 N. St. Mary's Street
Suite 517
San Antonio, Texas 78203



ASSISTANT ATTORNEY GENERAL

United States Department of Justice

WASHINGTON, D.C. 20530

JAN 18 1979

Mr. Earnest L. Langley
Witherspoon, Aiker & Langley
Attorneys at Law
P. O. Box 1818
Hereford, Texas 79045

Dear Mr. Langley:

This is in reference to the adoption of a numbered place requirement for election to the Board of Trustees of Hereford Independent School District, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on November 20, 1978.

We have given careful consideration to the information presented by you and to information and comments from other interested parties. Under Section 5 of the Voting Rights Act, the submitting authority has the burden of proving that a proposed change will not have a racially discriminatory purpose or effect. (See Georgia v. United States, 411 U.S. 526 (1973) and 28 C.F.R. 51.19). Given the potentially discriminatory effect which the courts have found present in numbered place systems (see Dunston v. Scott, 336 F. Supp. 206 (E.D. N.C. 1972)), we are unable to conclude that the burden of proving that the implementation of a numbered place system in Hereford I.S.D. will not have such an effect has been met. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of a numbered place system of election in Hereford I.S.D.

Defendant's Exhibit #

DE-006173

USA_00013240

- 2 -

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this change does not have the purpose or effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition the Procedures for the Administration of Section 5 (28 C.F.R. 51.21 (b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the change to a numbered place system legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the Hereford Independent School District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Voting Section Attorney David Hunter at 202--633-3849.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

D.J. 166-012-3
A3674-A3687

JAN 5 1979

Mr. David E. Owen
Forgan, Gashill & Owen
Attorneys at Law
2108 Continental Life Building
Fort Worth, Texas 76102

Dear Mr. Owen:

This is in reference to your request for reconsideration of the objection interposed on January 16, 1978 to the implementation by the Fort Worth Independent School District of Section 23.023(h) of the Texas Education Code and to the changes in polling places in Fort Worth Independent School District, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your request for reconsideration was received on January 23, 1978. Your submission of polling place changes was received on January 3, 1978.

The Attorney General does not interpose any objections to the changes in polling places. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

In reference to your request for reconsideration, we have given careful consideration to the new information furnished by you as to the manner in which Section 23.023(h) of the Texas Education Code will be implemented by Fort Worth Independent School District.

As indicated in our letter of January 14, 1977, our original objection was based on the concern which we identified at that time with respect to questions that were relative to the delayed transition to the new electoral system. The information now furnished shows that one district having the potential for minorities to elect a candidate of their choice will have that opportunity this year. However, with respect to the other two districts where minorities have no potential for election, representation of their choice the present incumbents will continue in office until 1980.

While our concerns have been allayed with respect to the district which will choose its representation this year, the concerns which led to our initial objection remain in regard to the two districts which will not hold elections until 1980. Accordingly, the Attorney General cannot withdraw his objection to the delayed election in those districts.

Since we understand that related issues are pending before the District Court in Williams v. Leatherbury, 644 F.2d 44, I am taking the liberty of sending the Court a copy of this letter.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

MAY 11 1979

Mr. William M. Holland
Attorney at Law
Post Office Drawer 230
Rusk, Texas 75785

Dear Mr. Holland:

This is in reference to the imposition of a place system and a majority vote requirement for the election of trustees to the Board of Trustees of the Alto Independent School District, Cherokee County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on March 15, 1979.

We have given careful consideration to the information furnished by you as well as Bureau of the Census data and information and comments from interested parties. Although we have received conflicting information as to the black population of the Alto Independent School District, there is apparent agreement on the black student population which is estimated to be approximately 40%. We must assume, therefore, that the total population of the school district is at least 20-30% black, which represents a substantial proportion of the overall population of the Alto Independent School District. Under the present method of election, school trustees are elected at-large. Under these circumstances, court decisions, to which we feel obligated to give great weight, indicate that a place system and majority vote requirement can have the potential for abridging minority voting rights. See Dunston v. Scott, 336 F. Supp. 206, 213 (N.D.N.C. 1972); White v. Rogester, 412 U.S. 755, 766-67 (1973); Zimmer v. McKeithen, 485 F. 2d 1297, 1305 (5th Cir. 1973), aff'd sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976); and Blacks United for Lasting Leadership v. City of Shreveport, 71 F.R.D. 623, 628, 632, 636 (W.D. La. 1976).

The information we have been provided does not demonstrate that the place system and majority vote requirement's recognized potential for diluting minority voting strength does not exist in the Alto Independent School District.

- 2 -

Although black candidates have been elected to the Board of Trustees, this was under the at-large, plurality method of election. The addition of potentially discriminatory electoral devices such as the place system and majority vote requirement will make it more difficult for black candidates to be elected and inhibit their full and equal participation in the school district's political process.

Section 5 of the Voting Rights Act places upon the submitting authority the burden of proving that submitted changes in voting practice and procedure do not have a racially discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526, 538 (1973); City of Richmond v. United States, 422 U.S. 358, 380-81 (1975) (Brennan, J., dissenting); 28 C.F.R. 51.19. Because of the potential for diluting black voting strength inherent in the use of a place system and majority vote requirement in the Alto Independent School District and because the school district has advanced no compelling reason for their use, we are unable to conclude that the burden of proof has been sustained and that the imposition of the place system and majority vote requirement, in the context of an at-large election system, does not have a racially discriminatory purpose and will not have a racially discriminatory effect in the Alto Independent School District. Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the place system and majority vote requirement for the election of trustees to the Board of Trustees of the Alto Independent School District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the place system and majority vote requirement legally unenforceable.

- 3 -

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the Alto Independent School District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Voting Section Attorney David Hunter at 202--724-7439.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

BSD:BHH:rjs
DJ 166-012-3
C1424-33; C1447-48
C1490-92; C1518-11

JUN 11 1979

Mr. Robert M. Collie, Jr.
City Attorney
City of Houston
Legal Department
Post Office Box 1562
Houston, Texas 77001

Dear Mr. Collie:

This is in reference to the annexations and disannexations by the City of Houston, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on April 12, 1979. Although we have attempted to make our determination with respect to this submission on an expedited basis, we have been unable to respond until this time.

To determine that a change in the composition of a city's population resulting from annexations does not have the effect of abridging the right to vote on account of race, color, or membership in a language minority group the Attorney General must be satisfied either that the percentage of members of a racial or language minority group in the city has not been appreciably reduced, that voting is not polarized between racial or language groups, or that, nevertheless, the city's electoral system will afford minority groups "representation reasonably equivalent to their political strength in the enlarged community." City of Richmond v. United States, 422 U.S. 358, 370 (1975).

- 2 -

To apply this legal standard to this submission we have carefully examined the information you have provided with respect to this submission, information provided by other interested persons, information in our files with respect to prior submissions by the City of Houston, and information in the record in Greater Houston Civic Council v. Hann, 448 F. Supp. 696 (S.D. Tex. 1977), pending on appeal, No. 77-2053 (5th Cir.).

According to the statistics you have provided, the submitted annexations have proportionally reduced the black population in the City of Houston from 21.0 percent to 14.1 percent, a reduction of 1.2 percentage points, and have reduced the Mexican American population from 14.0 percent to 11.5 percent, a reduction of 2.5 percentage points. Based on the relevant court decisions and in view of the relevant characteristics of the City of Houston, we find such reductions to be legally significant. See City of Richmond v. United States, 422 U.S. at 368-70; City of Petersburg v. United States, 354 F. Supp. 1021, 1028-29 (D.D.C. 1972), affirmed, 410 U.S. 961 (1973); City of Rome v. United States, C.A. No. 77-0797 (D.D.C. 1977), slip opinion at 63-64.

Our analysis of the statistics you have provided with respect to the voting patterns of different groups in the City of Houston and of precinct election returns for City elections reveals the frequent occurrence of polarized voting between blacks and whites and between Mexican Americans and whites. For example, in the 1977 election for the council position for majority black District D, 64.8 percent of the white voters but only 11.6 percent of the black voters voted for the white incumbent, Homer Ford, instead of for one of his three black challengers. See City of Richmond v. United States 376 F. Supp. 1344, 1346, 1356 (D.D.C. 1974), reversed on other grounds, 422 U.S. 352 (1975); City of Petersburg, 354 F. Supp. at 1025-26; City of Rome, slip opinion at 9-13, 64-66.

Although approximately two of every eight residents of the City of Houston are black, and approximately one of every eight residents is a Mexican-American, only one black, and no Mexican-American, has ever served on the eight-member City Council under the present electoral system.

- 3 -

Finally, a consideration of elections in the City of Houston, of the responsiveness of the City to the concerns and needs of blacks and Mexican Americans, and of the views of blacks and Mexican Americans and their representatives, leads to the conclusion that the present electoral system, under which all members of the City Council are elected in citywide elections, will not afford blacks and Mexican Americans "representation reasonably equivalent to their political strength in the enlarged community." City of Richmond, 422 U.S. at 370. See City of Petersburg, 354 F. Supp. at 1025-27; City of Rome, 311 opinion at 7-9, 64-66.

Thus none of the three conclusions that would support a determination that the annexations do not have a discriminatory effect can be reached. I am unable to conclude, therefore, as I must under the Voting Rights Act, that the submitted annexations will not have the effect of abridging the right to vote on account of race, color, or membership in a language minority group.

Nevertheless, the two deannexations (Ordinance Nos. 78-2671 and 77-2197) and one annexation (Ordinance No. 77-2402) do not involve populated areas, and two annexations involve areas with substantial minority populations (Ordinance Nos. 77-2354 and 78-2386). With respect to the two deannexations and to these three annexations the Attorney General, accordingly, does not interpose any objection. (We feel a responsibility to point out, however, that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.)

With respect to the voting changes occasioned by the remaining fourteen annexations (Ordinance Nos. 77-1664, 77-2353, 77-2355, 77-2356, 77-2357, 78-2378, 78-2381, 78-2382, 78-2383, 78-2384, 78-2385, 78-2386, 78-2387, and 78-2388), because of the conclusion we have reached, I must, on behalf of the Attorney General, interpose an objection pursuant to Section 5.

- 4 -

Should the City of Houston adopt an electoral system in which blacks and Mexican Americans are afforded "representation reasonably equivalent to their political strength in the enlarged community" the Attorney General will consider withdrawal of this objection. Our analysis indicates that one such system would include the election of some members of the City Council from single-member districts, if the districts are fairly drawn and if the number of districts is sufficient to enable both blacks and Mexican Americans to elect candidates of their choice. See City of Richmond, 412 U.S. at 370-73; City of Petersburg, 354 F. Supp. at 1027, 1031; City of Reno, slip opinion at 65-70.

I wish to stress that this determination relates only to the voting changes occasioned by the annexations in question. The objection to the implementation of such changes does not affect the validity of the annexations themselves.

Of course, as provided by Section 3 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the changes affecting voting resulting from these annexations have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. However, until such a judgment is obtained from the District of Columbia Court, the effect of the objection by the Attorney General is to make the voting changes resulting from these annexations legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

BSD:BHH:rjs
DJ 166-012-3
C1424-33; C1447-48
C1490-92; C1518-11

JUN 11 1979

Mr. Robert M. Collie, Jr.
City Attorney
City of Houston
Legal Department
Post Office Box 1563
Houston, Texas 77001

Dear Mr. Collie:

This is in reference to the annexations and disannexations by the City of Houston, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on April 12, 1979. Although we have attempted to make our determination with respect to this submission on an expedited basis, we have been unable to respond until this time.

To determine that a change in the composition of a city's population resulting from annexations does not have the effect of abridging the right to vote on account of race, color, or ancestry in a language minority group the Attorney General must be satisfied either that the percentage of members of a racial or language minority group in the city has not been appreciably reduced, that voting is not polarized between racial or language groups, or that, nevertheless, the city's electoral system will afford minority groups "representation reasonably equivalent to their political strength in the enlarged community." City of Richmond v. United States, 422 U.S. 159, 370 (1975).

- 2 -

To apply this legal standard to this submission we have carefully examined the information you have provided with respect to this submission, information provided by other interested persons, information in our files with respect to prior submissions by the City of Houston, and information in the record in Greater Houston Civic Council v. Hann, 440 F. Supp. 696 (S.D. Tex. 1977), pending on appeal, No. 77-3083 (5th Cir.).

According to the statistics you have provided, the submitted annexations have proportionally reduced the black population in the City of Houston from 26.0 percent to 24.8 percent, a reduction of 1.2 percentage points, and have reduced the Mexican American population from 14.6 percent to 13.5 percent, a reduction of 1.1 percentage points. Based on the relevant court decisions and in view of the relevant characteristics of the City of Houston, we find such reductions to be legally significant. See City of Richmond v. United States, 422 U.S. at 368-70; City of Petersburg v. United States, 354 F. Supp. 1021, 1028-29 (D.D.C. 1972), affirmed, 410 U.S. 961 (1973); City of Rome v. United States, C.A. No. 77-6797 (D.D.C. 1977), slip opinion at 63-64.

Our analysis of the statistics you have provided with respect to the voting patterns of different groups in the City of Houston and of precinct election returns for city elections reveals the frequent occurrence of polarized voting between blacks and whites and between Mexican Americans and whites. For example, in the 1977 election for the council position for majority black District D, 64.6 percent of the white voters but only 11.6 percent of the black voters voted for the white incumbent, Homer Ford, instead of for one of his three black challengers. See City of Richmond v. United States 376 F. Supp. 1344, 1346, 1356 (D.D.C. 1974), reversed on other grounds, 422 U.S. 358 (1975); City of Petersburg, 354 F. Supp. at 1025-26; City of Rome, slip opinion at 9-13, 64-66.

Although approximately two of every eight residents of the City of Houston are black, and approximately one of every eight residents is a Mexican-American, only one black, and no Mexican-American, has ever served on the eight-member City Council under the present electoral system.

- 3 -

Finally, a consideration of elections in the City of Houston, of the responsiveness of the City to the concerns and needs of blacks and Mexican Americans, and of the views of blacks and Mexican Americans and their representatives, leads to the conclusion that the present electoral system, under which all members of the City Council are elected in citywide elections, will not afford blacks and Mexican Americans "representation reasonably equivalent to their political strength in the enlarged community." City of Richmond, 422 U.S. at 370. See City of Petersburg, 354 F. Supp. at 1025-27; City of Rome, 511 opinion at 7-9, 64-66.

Thus none of the three conclusions that would support a determination that the annexations do not have a discriminatory effect can be reached. I am unable to conclude, therefore, as I must under the Voting Rights Act, that the submitted annexations will not have the effect of abridging the right to vote on account of race, color, or membership in a language minority group.

Nevertheless, the two deannexations (Ordinance Nos. 78-2671 and 77-2197) and one annexation (Ordinance No. 77-2402) do not involve populated areas, and two annexations involve areas with substantial minority populations (Ordinance Nos. 77-2354 and 78-2380). With respect to the two deannexations and to these three annexations the Attorney General, accordingly, does not interpose any objection. (We feel a responsibility to point out, however, that Section 3 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.)

With respect to the voting changes occasioned by the remaining fourteen annexations (Ordinance Nos. 77-1668, 77-2353, 77-2355, 77-2356, 77-2357, 78-2372, 78-2381, 78-2382, 78-2383, 78-2384, 78-2385, 78-2386, 78-2387, and 78-2388), because of the conclusion we have reached, I must, on behalf of the Attorney General, interpose an objection pursuant to Section 5.

Should the City of Houston adopt an electoral system in which blacks and Mexican Americans are afforded "representation reasonably equivalent to their political strength in the enlarged community" the Attorney General will consider withdrawal of this objection. Our analysis indicates that one such system would include the election of some members of the City Council from single-member districts, if the districts are fairly drawn and if the number of districts is sufficient to enable both blacks and Mexican Americans to elect candidates of their choice. See City of Richmond, 422 U.S. at 370-73; City of Petersburg, 354 F. Supp. at 1027, 1031; City of Rome, slip opinion at 65-70.

I wish to stress that this determination relates only to the voting changes occasioned by the annexations in question. The objection to the implementation of such changes does not affect the validity of the annexations themselves.

Of course, as provided by Section 3 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the changes affecting voting resulting from these annexations have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. However, until such a judgment is obtained from the District of Columbia Court, the effect of the objection by the Attorney General is to make the voting changes resulting from these annexations legally unenforceable.

Sincerely,

Draw S. Days III
Assistant Attorney General
Civil Rights Division

JUL 18 1979

DSD:BHW:DHH:mrk
DJ 166-012-3
C1424-28, 1431, 1433, 1447-48,
1490-92, 1508-09, 5075-90

Mr. Robert M. Collie, Jr.
City Attorney
City of Houston
Legal Department
Post Office Box 1562
Houston, Texas 77001

Dear Mr. Collie:

This is in reference to the application of Section 5 of the Voting Rights Act of 1965, as amended, to the City of Houston.

The following matters are before us:

(1) A request for reconsideration by the City of Houston of the June 11, 1979 objection pursuant to Section 5 to the voting changes occasioned by fourteen annexations to the City of Houston. This request, set forth in your letter of June 13, 1979, was received on June 19, 1979.

(2) A request that the Attorney General "limit [the June 11, 1979] objection, or otherwise modify, suspend, or clarify it, so that it does not extend to the enforcement of voting changes (i.e., the annexations) for the limited purposes proposed to be included on the August 11 ballot." This request, set forth in your letter of July 9, 1979, was received on that date.

(3) The submission pursuant to Section 5 of a City Charter amendment election to be conducted on August 11, 1979. This submission was received on July 9, 1979 and amended and supplemented on July 10, 13, and 17, 1979.

- 2 -

(4) The submission pursuant to Section 5 of the eight propositions that are to be the subject of the August 11 election. This submission was received on July 9, 1979 and amended and supplemented on July 10, 13, and 17, 1979.

To the extent possible we have, as you requested, expedited our consideration of these matters.

With respect to the reconsideration request, we have carefully considered the information and legal arguments presented in your letter, and for the reasons set out in my letter of June 11, 1979, on behalf of the Attorney General, I decline to withdraw the objection to the voting changes occasioned by the fourteen annexations.

With respect to the conduct of elections by the City of Houston while the objection remains outstanding, I should clarify the impact of our objection as it affects the referendum you propose to hold on Proposition 3. It is our view that Section 5 should not serve to prevent actions by the City that would be likely to provide a basis for curing the dilutive aspects of the annexation if those actions are taken consistent with state law and are not otherwise inconsistent with the purposes of the Voting Rights Act. Proposition 3 appears to be designed as an attempt to remedy the objection interposed on June 11, 1979, by defining a new method of election in the City as ultimately expanded, and on the basis of information presently available to us it appears that such a method of election, if adopted, may directly or indirectly lead to a withdrawal of the objection. In this light, and under the totality of the circumstances, on behalf of the Attorney General I do not object to the conduct of the August 11, 1979, referendum on Proposition 3 as proposed.

However, the same conclusion cannot be reached with respect to the nature of the referendum you propose to conduct on the remaining propositions. Those

- 3 -

propositions do not have the potential for remedying the objection interposed on June 11, 1979, and under the circumstances the referendum as proposed on Propositions 1, 2, 4, 5, 6, 7 and 8 would be inconsistent with the purposes of the Voting Rights Act while the June 11, 1979, objection remains outstanding. Accordingly, our objection cannot be modified or otherwise limited, suspended or clarified to allow the referendum on those propositions to proceed as proposed, and on behalf of the Attorney General I must object to the referendum as proposed on Propositions 1, 2, 4, 5, 6, 7 and 8.

With respect to the submission under Section 5 of the eight propositions themselves, review under Section 5 is only permitted when a completed enactment is submitted to the Attorney General or enactment complete in all respects except for the holding of a required referendum. 28 C.F.R. 51.7. Because of the objections interposed above to the holding of referenda on propositions 1, 2, and 4 through 8, this standard of finality is not satisfied and accordingly, on behalf of the Attorney General, I will make no determination at this time.

By the same standard, however, Proposition No. 3 is ripe for review at this time. Proposition 3 creates a new electoral system for the City Council of the City of Houston. The present system of nine Council members (including the Mayor) elected at large is replaced by a system under which nine (and once a certain population level is reached, eleven) members will be elected from single-member districts and six members (including the Mayor) will be elected at large. Although it appears that this change is of the kind that could meet the preclearance standards of Section 5, we have not yet been able to complete our review of this proposition in the time available to us so far. However, we will continue to expedite this review insofar as the circumstances allow and I will notify you of my decision on behalf of the Attorney General as soon as possible.

- 4 -

It is our understanding that the City Charter may be amended only once in a two-year period, and thus our review included a consideration of whether our decision to preclear only the potentially ameliorative portion of the referendum for the expanded City might affect the ability of the City to subsequently present the remaining issues to the electorate. Although it is our belief that at this time only the issue that could lead to a withdrawal of the objection can be placed before the electorate for referendum as was proposed, it is our view that if the resolution of that issue results in a withdrawal of the objection the City should not be precluded, notwithstanding the Charter provision, from subsequently presenting the remaining issues to the electorate. Thus, if the objection is withdrawn our staff is willing to support reasonable steps by the City to achieve this result, including any orders the City believes necessary to obtain in federal court.

With respect to the decision made on behalf of the Attorney General not to interpose an objection to the holding of a referendum on Proposition 3, as authorized by Section 5, the Attorney General reserves the right to reexamine this change if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day period. In addition, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change.

With respect to the objections to the voting changes resulting from the fourteen annexations and to the holding of referenda on Propositions 1, 2, and 4 through 8, you have the right, as provided by Section 5, to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes do not have the purpose and will not have the effect of denying or abridging the right to vote on

- 5 -

account of race, color, or membership in a language minority group. In addition, our administrative procedures, 28 C.F.R. 51.21(b) and (c), 51.23, and 51.24, permit you to request the Attorney General to reconsider these objections. However, until the objections are withdrawn or the judgment from the District of Columbia Court is obtained, the effect of the objections by the Attorney General is to make these voting changes legally unenforceable.

Because the Court in the consolidated cases of Leroy v. City of Houston and United States v. Houston, C.A. No. 76-H-2174 and 78-H-2407 (S.D. Texas), has indicated a desire to hear any motions later this week insofar as the recent submissions are involved, I would appreciate it if you will inform us immediately of the manner in which the City intends to comply with the decisions set out above. I am taking the liberty of providing copies of this letter to the Court and to counsel for the private plaintiffs.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

cc: Honorable Gabrielle K. McDonald
L. A. Greene, Jr., Esquire



ASSISTANT ATTORNEY GENERAL

United States Department of Justice

WASHINGTON, D.C. 20530

AUG 17 1979

Mr. G. V. Jackson, Jr.
Office of the City Clerk
City of San Antonio
P. O. Box 9066
San Antonio, Texas 78285

Dear Mr. Jackson:

This is in reference to the polling place location for Precinct 205 for the April 7, 1979 municipal election in San Antonio, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on June 18, 1979.

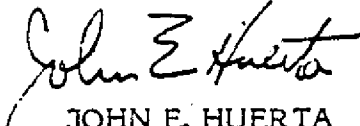
We have given careful consideration to the information provided by you as well as information and comments from other interested parties. Our analysis reveals that District 6 is majority Mexican-American, that Precinct 205 is heavily Mexican-American, and that a pattern of racial bloc voting exists in District 6. Our analysis further reveals that the location of the polling place for Precinct 205 at Our Lady of the Lake University, although a suitable location for future elections, was on April 7, 1979 inaccessible to voters because of construction that blocked the two main thoroughfares leading to the university. The inaccessibility of the polling place was further aggravated by the lack of public notice concerning the exact location of the polling place on the campus.

Under Section 5 the submitting jurisdiction has the burden of proving that the voting change was not adopted with a discriminatory purpose or effect. See Beer v. United States, 425 U.S. 130 (1976); Wilkes County v. United States, 450 F. Supp. 1171 (D.D.C. 1978), affirmed U.S. Law Week 3391 (Dec. 4, 1978) (No. 78-76). See also 28 C.F.R. 51.19. The facts described above lead us to conclude that you have not sustained your burden of demonstrating that the polling place change for Precinct 205 did not have the purpose or effect of discriminating against Mexican-American voters in District 6 at the April 7, 1979 election. Accordingly, on behalf of the Attorney General, I must interpose an objection to that location.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the change in polling place location legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the City of San Antonio plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call the Director of the Section 5 Unit Mr. John P. MacCoon at 202-724-7439.

Sincerely,


JOHN E. HUERTA
Acting Assistant Attorney General
Civil Rights Division

SEP 12 1979

DSD:JMC:RW:rjs
DJ 166-012-3
C5242

Mr. Hugo J. Nowotny
Business Manager
Comal Independent School District
Central Administrative Offices
1421 Highway 21 East
New Braunfels, Texas 78130

Dear Mr. Nowotny:

This is in reference to the numbered place system for the election of members to the Board of Trustees for Comal Independent School District, Comal County, Texas, and to our letter to you of August 30, 1979, in which we advised of the continuance of the April 4, 1977, Attorney General objection to that method.

To remove any doubt as to the legal effect of our August 30, 1979 letter to you, I thought this letter of clarification appropriate. It should be understood that the Attorney General objects both to the submission completed on February 2, 1977 (to which the Attorney General initially objected on April 4, 1977), and to your submission on July 17, 1979 of the June 19, 1979 Resolution of the Board of Trustees of the Comal Independent School District. Since the June 19, 1979 Resolution provides for the identical practice previously objected to, and since you have furnished no new information justifying any change in our position, I must, on behalf of the Attorney General, continue the objection of April 4, 1977, and object to the June 19, 1979 Resolution providing for numbered seats.

- 2 -

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the numbered place system legally unenforceable.

Sincerely,

DEW S. DAVIS III
Assistant Attorney General
Civil Rights Division

14 SEP 1979

Mr. Walter E. Wisell
City Attorney
City of Lockhart
Brown, Karney, Rose,
Baker and Barber
1300 American Bank Tower
221 West Sixth Street
Austin, Texas 78701

Dear Mr. Wisell:

This is in reference to the Home Rule Charter adopted on February 20, 1973 for the City of Lockhart, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on July 16, 1979.

We have given careful consideration to the information provided by you, as well as information and comments from other interested parties. Our analysis reveals that the Home Rule Charter for Lockhart provides for an at-large election scheme, which includes the use of staggered terms and numbered places. The new form of government also provides for two additional representatives, and a council with somewhat greater power than the prior form of government. There are, in addition, indications that racial bloc voting exists in Lockhart elections, and that the city government may not be as responsive to its minority constituents as to its Anglo constituents.

Recent court decisions suggest that an at-large voting system which incorporates features such as numbered posts and staggered terms may operate to minimize or dilute the voting strength of minority groups and thus have an invidious discriminatory effect. See White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971).

- 2 -

In view of these court decisions, and on the basis of all the available facts and circumstances, the Attorney General is unable to conclude, as he must under the Voting Rights Act, that the Home Rule Charter, in its present form will not have a discriminatory effect on the voting rights of racial or language minorities in the City of Lockhart. On behalf of the Attorney General, I must interpose an objection to the Home Rule Charter insofar as it incorporates an at-large method of election, with numbered posts and staggered terms.

Of course, as provided by Section 3 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, the Procedures for the Administration of Section 5 (18 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the Home Rule Charter legally unenforceable with respect to the at-large method of election, and the numbered post and staggered term features.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the City of Lockhart plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call John MacCoun, the Director of the Section 5 Unit, at 202-724-7439.

Sincerely,

Draw 8. Days III
Assistant Attorney General
Civil Rights Division

SEP 21 1979

DSD:GWJ:DHH:mrk
DJ 166-012-3
C1424-28, 1431, 1433, 1447-48,
1490-92, 1409-09, C5899,
C5898, C6150-53

Mr. Robert M. Collie, Jr.
City Attorney
City of Houston
Legal Department
Post Office Box 1562
Houston, Texas 77001

Dear Mr. Collie:

This is in reference to the application of Section 5 of the Voting Rights Act of 1965, as amended, to the City of Houston.

The following matters are before us:

(1) The submission pursuant to Section 5 of the plan adopted by the City of Houston for nine councilmanic districts, Ordinance No. 79-1584, as modified by Ordinance No. 79-1638. Your submission was received on September 13, 1979; the modification was received on September 19, 1979; preliminary information was received on August 20, 24, 27, and 30 and September 6, 1979, and supplementary information was received on September 14 and 19, 1979.

(2) A request that the Attorney General withdraw the objection pursuant to Section 5 interposed on June 11, 1979, to fourteen annexations to the City of Houston. Your request was received on August 21, 1979; information supplementing this request was received on August 24 and September 14, 1979.

(3) The submission pursuant to Section 5 of changes with respect to voting to be implemented in the bond election scheduled for September 25, 1979, Ordinance No. 79-1429. Your submission was received on August 24, 1979.

- 2 -

(4) The submission pursuant to Section 5 of polling place changes in precincts 187, 313, 470 and 494, Ordinance No. 79-1637. Your submission was received on September 19, 1979.

In approaching these matters we are mindful that the City has determined a need to have a bond election on September 25, 1979. We are also mindful of the upcoming councilmanic election and the importance to the citizens of Houston to have the electoral system to be used in that election determined well in advance of its November 6, 1979, date. For these reasons, we have expedited our consideration of these matters as you requested. We have been able to expedite to the extent that we have primarily because of our continued study of the Houston situation since the receipt on February 8, 1979, of the City's initial submission of its annexations and deannexations, our constant communication with the City and other interested parties during the preparation for and our monitoring of the process leading up to the September 12, 1979, adoption by the City Council of the districting plan, and our intensive review of the plan since its adoption.

Our analysis has involved two basic questions: whether the districting plan adopted by the City satisfies the standards of Section 5 of the Voting Rights Act and whether the expanded city council membership elected under that districting plan provides a basis for the withdrawal of the June 11, 1979 objection. During our review we have sought to follow the legal principles developed by the courts in their interpretation of Section 5. See Beer v. United States, 425 U.S. 130 (1976); City of Richmond v. United States, 422 U.S. 358 (1975). We have also conducted intensive research and obtained the views of blacks, Mexican-Americans and other interested persons residing in the City of Houston. In particular we have considered the accuracy of the statistics used by the City in the creation of the adopted plan, the proportions of the City's population that blacks and Mexican-Americans constitute, the probable composition of a district

- 3 -

that could be expected to afford blacks or Mexican-Americans a reasonable opportunity to elect candidates of their choice, the probable impact that black and Mexican-American voters will be able to have in the nine districts created by the City's plan and in various alternative proposals, the factors given weight by the City in the development of the adopted plan, and the probable impact that black and Mexican-American voters will be able to have on the election of at-large-elected members of the council, including the Mayor.

On the basis of this research and analysis I am persuaded that the City of Houston has satisfied its burden of proving that the adopted districting plan does not have the purpose and will not have the effect of abridging the right to vote on account of race, color, or membership in a language minority group and that the new councilmanic electoral system (the nine-five plan) with the districts that have been created for use under this system afford blacks and Mexican-Americans a fair opportunity to obtain "representation reasonably equivalent to their political strength in the enlarged community." City of Richmond v. United States, 422 U.S. at 370. Accordingly, on behalf of the Attorney General I am not interposing an objection to the districting plan and I am withdrawing the June 11, 1979, objection to the fourteen annexations to the City of Houston.

In view of the foregoing, I also do not interpose any objection to the voting changes to be implemented in the bond election scheduled for September 25, 1979, nor to the four polling place changes.

We feel a responsibility to point out, however, that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine these submissions if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day periods.

- 4 -

I am taking the liberty of providing copies of this letter to the Court and to counsel for the private plaintiffs in Leroy v. City of Houston, C.A. Nos. 78-A-2174 and 78-A-2407 (S.D. Texas).

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

cc: Honorable Gabrielle K. McDonald
L.A. Greene, Jr., Esquire

Defendant's Exhibit #

DE-006202

USA_00013269